

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

APR 11 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Market Entry and Regulation of)
Foreign-affiliated Entities)

IB Docket No. 95-22
RM-8355, RM-8392

To: The Commission

DOCKET FILE COPY ORIGINAL

COMMENTS OF
PANAMSAT CORPORATION

PanAmSat Corporation ("PanAmSat") submits these comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-referenced proceeding.¹ As a separate satellite system operator, PanAmSat currently provides voice, video, and data services between and among countries in North and South America, the Caribbean, Europe, and Asia. Within the next year, PanAmSat will add two new satellites to its constellation and will then provide service worldwide.

In the NPRM, the Commission has proposed to add an effective market entry standard to its analysis of applications submitted by foreign carriers seeking to provide U.S. international facilities-based services. For the reasons discussed below, PanAmSat endorses the changes proposed by the Commission. Moreover, PanAmSat submits that the Commission's effective market entry analysis should be more expansive than that outlined in the NPRM. Specifically, when evaluating applications of entities proposing to use a non-U.S. licensed satellite, the

¹ Market Entry and Regulation of Foreign-affiliated Entities, Notice of Proposed Rulemaking (rel. Feb. 17, 1995).

No. of Copies rec'd
LIST A B C D E

atg

Commission should consider the extent to which U.S. satellites have effective market access overseas enabling them to compete with the non-U.S. satellite.

I. DISCUSSION

The Commission has identified three goals in this proceeding: “(1) to promote effective competition in the global market for communications services; (2) to prevent anticompetitive conduct in the provision of international services or facilities; and (3) to encourage foreign governments to open their communications markets.”² To accomplish these goals, the Commission tentatively has concluded that it will “modify [its] entry standard for international facilities-based carriers.... [such that] an important element of [its] proposed public interest test [is] effective market access for U.S. carriers in the primary international telecommunications markets served by the carrier desiring entry.”³

A. **The Commission’s Proposed Modifications to its Public Interest Standard Will Promote Competition and Contribute to the Opening of the Global Telecommunications Marketplace.**

PanAmSat shares the Commission’s hope for an open and competitive global telecommunications marketplace. Moreover, PanAmSat agrees with the Commission’s conclusion that the “key to global competition is foreign market liberalization.”⁴ Thus, PanAmSat supports the Commission’s efforts to effectuate an opening of foreign markets through use of an effective market entry standard when evaluating foreign carrier applications under Sections 214 and 310(b)(4).

² Id. ¶ 1.

³ Id. ¶ 38.

⁴ Id. ¶ 31.

The United States telecommunications market is the most open, competitive, and lucrative telecommunications market in the world. As a result, the addition of an effective market access standard when evaluating foreign companies' applications to compete in this market promises to be a potent means of opening foreign telecommunications markets and liberalizing foreign ownership policies abroad. This, in turn, will enhance global competition, increase opportunities for U.S. service providers, and benefit consumers worldwide.

Notwithstanding these many benefits, the Commission has asked for comment on the scope of its authority to consider the availability of effective market access under Sections 214 and 310(b)(4). Under the Communications Act, the Commission has "general regulatory jurisdiction over 'all interstate and foreign communications by wire or radio... and... all persons engaged within the United States in such communication.'"⁵ The Commission's authority extends to actions that are "reasonably ancillary to the effective performance of [its] various responsibilities."⁶

Both Section 214 and Section 310(b)(4) require the Commission to evaluate the public interest effects of foreign carrier entry into the U.S. market. Given the indisputable public benefits of a competitive global telecommunications marketplace, and the likelihood that the addition of the proposed effective market entry standard will promote the development of such a marketplace, Sections 214 and 310(b)(4) allow for, if not require, the consideration of market opportunities in foreign countries when evaluating applications to provide services in the U.S.

⁵ Southwestern Bell Tel. Co. v. FCC, 19 F.3d 1475, 1479 (D.C. Cir. 1994) (quoting 47 U.S.C. § 152(a)).

⁶ United States v. Southwestern Cable Co., 392 U.S. 157, 178 (1968).

B. The Commission Should Apply Its Effective Market Entry Standard to Applications to Provide International Facilities-Based Services Using Non-U.S. Licensed Satellites.

For the reasons outlined above, PanAmSat supports the Commission's proposed modifications to its public interest analysis under Sections 214 and 310(b)(4). However, to provide other countries further incentive to open their telecommunications markets to competition, the Commission should extend its proposed effective market entry analysis. Specifically, when presented with an application to provide international facilities-based services using a non-U.S. licensed satellite, the Commission should consider in its public interest evaluation the extent to which U.S. satellites have effective market access overseas enabling them to compete with the non-U.S. satellite.⁷

For example, if a foreign country does not permit international communications services to be provided via a U.S. satellite, or if a foreign country does permit U.S. satellites to provide satellite services, but requires all services to be provided through and in connection with a foreign monopoly PTT, that country's satellites should not be allowed to provide international services to the U.S. Otherwise, the foreign satellite operator will enjoy an unfair and undeserved competitive advantage.

Indeed, it may be more important to apply the effective market access standard in this context than in others. In contrast to most other international communications facilities capable of providing services to the U.S., which require construction authority or other Commission approval, the Commission does not license or approve non-U.S. satellite systems that are used to provide service to or

⁷ Although the focus of the NPRM is on applications for common carrier licenses, PanAmSat suggests that the effective market entry standard apply to any and every application to provide services over a non-U.S. licensed satellite.

from the United States. Because there is no approval process for non-U.S. satellite systems, the Commission does not have an opportunity to evaluate market access in a country responsible for a non-U.S. licensed satellite until an application is filed for authority to construct or use an earth station or other facility that will connect with one of these satellites to provide services in the U.S. If the Commission is to “promote effective competition in the global market” for satellite services, therefore, it must apply its proposed effective market access standard in this context.

Extending effective market access analysis to international satellite services will become increasingly important as the market for these services expands and new providers and potential customers enter the marketplace. In some cases, competing satellite providers will be from countries that completely prohibit access to services provided via U.S. satellites. In other cases, foreign countries impose onerous regulatory or financial burdens that fall disproportionately on U.S. satellite providers. For instance, in many cases U.S. satellite providers are required to pay substantial fees, become licensed carriers in the foreign country, or use earth station facilities operated by the foreign monopoly telephone provider in order to provide satellite services. If satellite providers from these countries are permitted to compete, without limitation, for services delivered to the U.S., the resulting “asymmetric market access [will be] detrimental to both U.S. service providers and U.S. consumers.”⁸ Thus, it is important that PanAmSat and other satellite providers are not foreclosed from, or otherwise handicapped in their efforts to compete in the market for separate international satellite systems.

Finally, to the extent that the Commission can help to open markets abroad for separate system operators, it will promote the development of competition to

⁸ NPRM ¶ 22.

Intelsat. Because the monopoly service provider in many countries is also the Intelsat signatory, Intelsat enjoys virtually automatic access anywhere in the world. For the same reason, the monopoly service providers in many countries have a structural incentive to resist access by separate system operators. Encouraging competition in these markets would significantly equalize the competitive marketplace for satellite-delivered services.

The attractiveness of the U.S. telecommunications market provides the Commission with considerable leverage to ensure that PanAmSat and others are not disadvantaged in their efforts to provide satellite services worldwide. Modification of the Commission's public interest analysis as suggested by PanAmSat in these comments would limit access to the U.S. market for foreign satellite systems that have an unfair advantage in non-U.S. markets. This will, in turn, provide an economic incentive to other countries to open their markets to competition. Thus, the extension of the Commission's public interest standard suggested in these comments would promote global competition in international satellite services and directly benefit consumers the world over.

II. CONCLUSION

For the reasons set forth above, the Commission should, when evaluating applications of entities proposing to use non-U.S. satellites, consider the extent to

which U.S. satellites have effective market access overseas enabling them to compete with the non-U.S. satellite.

Respectfully submitted,

PANAMSAT CORPORATION



Joseph A. Godles
W. Kenneth Ferree

GOLDBERG, GODLES, WIENER & WRIGHT
1229 Nineteenth Street, NW
Washington, DC 20036
(202) 429-4900

Its Attorneys

April 11, 1995